

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>NANCY MOSSER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,009,353
<b>AMARR GARAGE DOOR GROUP</b>	)	
Respondent	)	
AND	)	
	)	
<b>AMERICAN HOME ASSURANCE (aka AIG)</b>	)	
and <b>PENNSYLVANIA MANUFACTURERS</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent and its insurance carrier AIG appeal the July 16, 2003 preliminary hearing Order of Administrative Law Judge Brad E. Avery. The single issue raised by respondent in its appeal is “[w]hether the administrative law judge exceeded his authority in ordering AIG to provide medical treatment for injuries sustained as the result of an accident determined to be eight months outside its coverage.”

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board (Board) finds that the above appeal should be dismissed.

The parties acknowledged at preliminary hearing that compensability was not at issue. The only dispute dealt with the appropriate date of accident for the purpose of determining which insurance company would be liable for the benefits awarded. As has been held many times in the past, the date of accident for the purposes of determining which insurance company is liable is not a finding of fact that is reviewable from a preliminary hearing order.<sup>1</sup>

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<sup>1</sup> *Hoss v. Standard Beverage Corporation*, No. 259,486, 2001 WL 125018 (Kan. WCAB Jan. 31, 2001).

K.S.A. 44-534a and K.S.A. 44-551 limit the issues which may be appealed from a preliminary hearing. Those issues, which have been considered jurisdictional and, therefore, appealable, deal with whether the employee suffered an accidental injury, whether the accidental injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, and whether certain defenses apply.<sup>2</sup>

None of the jurisdictional issues listed in K.S.A. 44-534a are involved in this particular dispute. This is merely a fight between insurance companies over who should pay the benefits. As noted above, that issue is not jurisdictional and the appeal will, therefore, be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of respondent in the above matter should be, and is hereby, dismissed and the Order of Administrative Law Judge Brad E. Avery dated July 16, 2003, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2003.

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BOARD MEMBER

c: Chris Miller, Attorney for Claimant  
Matthew S. Crowley, Attorney for Respondent and Insurance Carrier (AIG)  
Eric T. Lanham, Attorney for Respondent and Insurance Carrier (Pennsylvania)  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Director

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<sup>2</sup> K.S.A. 44-534a(a)(2).